

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action dated August 14, 2006. Pending Claim 5 has been amended. Claims 6-20 have been added. Claims 1-4 were previously withdrawn. Accordingly, Claims 5-20 are now pending. The Examiner has objected to the claim of priority and the drawings. Claim 5 has been rejected under 35 USC § 102 as being anticipated by U.S. Patent No. 6,484,331 to Minnick ("Minnick").

Objection of Priority Claim

The Examiner has objected to the claim of the priority. Applicant as amended the claim of priority to change the present application's relationship to the parent application from continuation to continuation-in-part. Withdrawal of the objection is therefore respectfully requested. In addition, included herewith is a substitute declaration that indicates that the present application is a continuation-in-part of the parent.

Objections to the Drawings and Disclosure

The Examiner has objected to the proposed drawing correction filed on June 30, 2006. Amended Figures have been submitted to address this objection. More specifically, Figs. 1 and 1A have been amended to their originally filed state and Figs. 2 and 3 have been amended to the version submitted July 6, 2004. Thus no new matter has been added and withdrawal of the objection related to the figures is therefore respectfully requested. The objection related to the omission of reference characters 37A, 37B, 56, 61 and 68 has been rendered moot by the drawing amendments.

The specification has been amended to clarify that the cap is interconnected to the pipe as requested by the Examiner. Applicants traverse, however, the assertion the cap can only engage the pipe and not the end wall of the tub. More specifically, one skilled in the art will appreciate that a portion of the cap, for example, the flange, may engage the tub wall if the tub wall is sufficiently thick such that the end of the overflow pipe is not situated within the tub.

Claim rejections - 35 USC § 102

The Examiner has rejected Claim 5 as being anticipated by Minnick. In order to anticipate a claim, a reference must disclose each and every claim element either expressly or implicitly. Applicant respectfully traverses this rejection since Minnick does not teach every aspect of Claim 5, which has been amended to more succinctly claim one embodiment of the present invention. More specifically, the Examiner has stated that Minnick includes a cylindrical body having threads. Claim 5, however, claims a cylindrical body having *interior* threads, a feature not found in Minnick. In addition, amended Claim 5 includes a thin membrane affixed to a face and the flange of the cap. Conversely, Minnick includes a test cap 16 integrally molded to an outer end 15 of the overflow cap by a frangible seam 17, not a membrane directly interconnected to the face of the flange. That is, Minnick shows a “face”, i.e., a surface of the flange 11, spaced from the end of the cap. The alleged “membrane” 16 of Minnick is not interconnected to a “face” as contemplated by one embodiment of the present claimed invention (e.g., Claim 5). Minnick’s device therefore does not meet the limitations set forth in Claim 5. These differences, along with others apparent to one skilled in the art, warrant withdrawal of the rejection. Further, Minnick requires tabs 27 and 28 be positioned away from the flange 11 for interconnection of a cross member 40 after the test cap portion 16 is removed. One skilled in the art could not position the flange 11 of Minnick coincident with the opening created by removal of the test cap position 16 because there would be no place to locate the tabs 27 and 28 so that they could receive cross member 40.

Claims 6-20 have been added to claim additional aspects of the invention. Claims 6-9 are believed allowable because Claim 5 (from which they depend) is believed to be allowable for the reasons stated above. Claims 10-20 are believed allowable because they claim similar patentable aspects found in Claim 5. That is, none of the references of record include a cap with a membrane interconnected to a face thereof. The closest prior art, U.S. Patent 1,213,466 to Delanoy shows a plate interconnected to an inner diameter of a bushing that is used as a sealing member.

Application No. 10/721,694

Conclusion

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. Since the undersigned has been recently retained by the Applicant, it is believed that a telephone interview would further prosecution and/or expedite allowance. Thus it is respectfully requested that the Examiner contact the undersigned at his earliest convenience.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Craig W. Mueller
Registration No. 52,055
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: February 14, 2007